

Moultonborough Planning Board
P.O. Box 139
Moultonborough, NH 03254

Special Meeting

August 14, 2013

Minutes

Present: Members: Tom Howard, Chair; Peter Jensen, Paul Punturieri, Josh Bartlett,
 Judy Ryerson, Bob Goffredo; Russ Wakefield (Selectmen's Representative)
 Alternates: Keith Nelson, Natt King

I. Pledge of Allegiance

Mr. Howard opened the meeting, lead the Pledge of Allegiance, then recused himself from consideration of the minutes of July 10th, 2013. Mr. Jensen assumed role of Chair and seated Mr. Nelson in place of Mr. Howard.

II. Approval of Minutes

Motion offered by Mr. Punturieri to approve the amended Minutes, seconded by Mr. Wakefield. The Board voted unanimously to approve the minutes.

Mr. Howard resumed his role of Board Chair. Mr. Nelson resumed alternate status.

III. Other Business/Correspondence

1. Discussion among Planning Board members relative to "the recent events that have led to the requested resignation of two members" -per the- three members requesting Special Meeting

Mr. Howard explained this was not a public hearing but he would allow audience comments after the Board all had opportunity to comment first. Mr. Howard asked Mr. Punturieri to lead off the discussion. Mr. Punturieri read a prepared statement and a prepared motion. (Paper copy provided)Mr. Punturieri's motion was seconded by Mr. Bartlett

Mr. Howard read the specific portion of the Planning Board policies that explain how the special meeting was called and that all conditions of the policy were met.

Discussion ensued among the board members. Mr. Nelson stated that the board acts a whole and the complaint should be to the board as a whole and not the individual members. Mr. King agreed with Mr. Nelson and felt that there were many irregularities that evening (July 10th 2013). Action should be to the board in its totality, perhaps meeting with the board.

Mr. Bartlett then read a prepared statement into the record (attached).

Mr. Wakefield stated that he is a selectman and this action is an extension of the Board of Selectmen. Despite what people in the audience may have heard or read in the paper, this action was not prompted by the Board of Selectmen.

Mr. Wakefield stated that it was prompted by a petition that was submitted by an individual acting as a taxpayer and a resident. We (BoS) were advised by Town Counsel to follow a course of action based on that petition to us. That's why we took the action we did. The original letter that we sent to Judy and Josh was a decision that we did make. We gave them the option (resignation) to avoid a public hearing which has been scheduled for September 9th. We don't expect Judy or Josh to have to come in with an attorney; this is a fairly simple affair. They would explain their side of the story. We would expect the petitioner to support their petition. And it's going to come down to that. We

have made no decisions. We've had no secret meetings. Our decision will be made on September 9th according to both sides of the story as it is presented to us. I take exception to the claim that we have had secret meetings. I take exception to the claim that we are railroading a couple of members that have put a lot of time into this board.

Mr. Jensen stated that the charges should not succeed. He did not think that we should be attacking volunteers that act on behalf of town's people when they run against a difficult issue to struggle through. He had difficulty during that hearing as chair and still doesn't know what the right answers are. The challenges we faced were caused by completely other circumstances and we should be addressing those and tightening up the difficulties that led to this in the first place, not to the people on the board. People changed their mind during debate which is what discussion is for. Mr. Punturieri responded to Mr. Wakefield's comments that asking these defendants to resign or face public embarrassment should not have been the first step in the process. He further stated that there is bigger problem here and that any member of any board or commission can face the same issue if a few people sign a petition asking them to be removed from office. Mr. Wakefield stated that that is a very important concern. This is an important issue. I don't take it lightly. The BoS discussed this at great length and we felt that the only course we really had was to go through the vetting process including a hearing with the board members charged and including the petitioner. We saw no other way to do it. We discussed this at great length with Town Counsel's input and this is the course we took. We could have come to the PB first and discussed this, but that doesn't satisfy the petition, because the petition calls for a hearing.

Mr. Howard reviewed the PB policies for clarification regarding removal of members.

It refers to RSA 673:13. It does not say the PB is required to do that but giving the PB the option.

He then read RSA 673:13 paragraph 2:

"The board of selectmen may, for any cause enumerated in paragraph I, remove an elected member or alternate member after a public hearing." It does not say it needs necessarily to go to the PB first.

Mr. Nelson questioned Mr. Wakefield regarding the petition. Was there more than one signature?

Mr. Wakefield responded that one is all it takes. The petition we (BoS) received is the same one they (Ms. Ryerson and Mr. Bartlett) received.

Mr. Nelson asked if the BoS are aware of whom the petitioner is? Mr. Wakefield responded, we are yes and they (Ms. Ryerson and Mr. Bartlett) should be, it's on the petition. Mr. Bartlett asked when are going to see the petition? Mr. Wakefield stated that they should have already received it to which Mr. Bartlett responded he only received a letter of notice of hearing but no petition. Mr. Wakefield stated that he recalls at the last BoS meeting he asked Mr. Terenzini, Town Administrator if you (Mr. Bartlett) had received all the correspondence that the BoS had. He didn't want to get too much into it but indicated yes you had and you sat in the audience and said yes I have a piece of paper that tells me some things but I don't understand it.

Mr. Howard interjected that Mr. Bartlett received the notice of hearing under RSA 673:13 but you are now saying that you did not receive the petition. Ms. Ryerson indicated that she also did not receive the petition and that she received nothing prior to the letter notifying her of the hearing.

Mr. Nelson stated that in all fairness they should know who the petitioners are and what the allegations are. Mr. Wakefield stated that at last week's BoS meeting he asked if these individuals had received the same information as the BoS and is was indicated that they have.

Mr. Nelson stated that it seems that someone didn't like the way they voted at a hearing and didn't think that was cause for removal.

Mr. King stated that he was embarrassed and angst about the decision (on July 10th). He felt the BoS were within their right to request a hearing, but he hopes the BoS realize that it does not rise to the level of dismissing any of the board members. We can all assume some blame for a really mismanaged hearing.

Ms. Ryerson commented that because of what is happening now, we are going to be in an adversarial position with the BoS . We need to get together with the ZBA and the BoS and address this problem which we all acknowledge was a problem. I hope we won't lose sight of what really is at issue here. Mr. Wakefield stated that he wanted the PB to know

that the BoS have not made their mind up and to have faith in their elected officials. I have an idea on where the board is going to go on this, but have some faith in the BoS handling this properly. Mr. Nelson offered an amendment to Mr. Punturieri's motion : The Moultonboro Planning Board does not support the removal of two Planning Board members based upon the notice of hearing that would removal of elected members." Mr. Punturieri stated that he specifically included the language " forced the resignation" to make a point. Mr. Nelson stated that the BoS did not try to force the resignation but will hold a hearing based upon the allegations. Mr. Punturieri responded that if a PB member is called to Town Hall by a person designated by the BoS and asked to resign or face the embarrassment of a public hearing, he didn't see the difference. You are asking me to resign. Why ask a person to resign first and then have a public hearing. Mr. Punturieri stands by his motion and Mr. Bartlett's stated his second stands.

Mr. Bartlett asked Mr. Wakefield for clarification that he will see a copy of the actual petition and when will that occur. Mr. Wakefield stated he would hope so , but he obviously couldn't answer that. I have to get with the BoS and the Town Administrator and ask why those documents have not been given. The sooner they can be in your hands the better I'll like it. Mr. Bartlett stated he made a Right to Know request on Monday and was told that no such documents existed. Did someone lie to me? Mr. Wakefield responded that all documents associated to this affair are available when we released them. Due to it being a consultation with Town Counsel under the RSA's notes cannot be released. When this is all over you can have all those documents. Mr. Bartlett stated that it goes beyond consultation with Town Counsel. You deliberated and made decisions.

Mr. Bartlett called the question. Mr. Howard stated that while it was unusual, he was going to allow the public to comment even though a motion is on the table.

The meeting was then opened for public comment. Don Mcgillicuddy stated that he finds it inconceivable that this gentlemen and this lady have been charged with these crimes or whatever you want to refer them and these persons don't have the names of the persons that charged them. The Town Administrator was supposed to supply this information and he didn't do his job. People's reputations are smeared and they will have to bring attorneys despite Mr. Wakefield's assurance that they didn't need one. It should never have gotten to this point. As a citizen of Moultonboro I'm embarrassed. It's like a zoo, a soap opera. Jim Cahill stated that the documents should be available to the public and is the petitioner going to be named in the documents?

Diane Bartlett spoke to the board and was confused over the statute. Am I hearing that one person can write a letter or petition and the BoS have to proceed to a public hearing or on this case ask for resignation. Is this the only response?

Mr. Howard responding, speaking for Mr. Wakefield that no they do not but based upon the information contained in the letters and the selectmen decided that this information was pertinent enough and decided to go ahead with the public hearing. Mr. Wakefield confirmed that this was correct. Mr. Howard continued that based upon the information provided by the petitioner, the BoS made the decision to proceed with the public hearings. The outline in the hearing notices was essentially from the petitioner and not from the BoS. We're just the pass through body.

Mrs. Bartlett commented that it is unfortunate that one person's allegations were sufficient to have two members of the planning board removed . I think it is unfortunate that they did not call each member in. I think it is unfortunate that they sent the Town Administrator and I think it is especially unfortunate that they offered each to resign which speaks to Mr. Punturieri's motion. To many people being given that option they may feel that they are being manipulated and a decision has already been made. She was also concerned about the behavior of the Town Administrator. He told the BoS that the information about the petitioner had been given to Ms. Ryerson and Mr. Bartlett and it hadn't. He should be more closely supervised.

Mr. Wakefield commented that this was an unusual situation. At the Bears Nest hearing, a discussion occurred as to whether Ms. Ryerson could change her vote. My opinion is yes she does. We had vetted that through the PB. That or may or may not been a mistake. I was under the assumption that all of that material was clearly given to them. We might have made a mistake. This is the first time this has happened.

Mr. King commented that this is not the first time this happened before in the early 80's. He was invited to the BoS and determined that it was a not a good idea to have him removed, but it was a process.

Mr. Bartlett asked if he was given the courtesy of knowing who his accuser was. Mr. King stated that there were multiple people.

Mrs. Bartlett commented that at the August 1st BoS meeting, the Town Administrator made the statement that the complaint came from the BoS. This conflicts with the information I am hearing tonight. Mr. Wakefield confirmed that it was never the BoS complaint. Mr.; Bartlett stated that at his private meeting with the Town Administrator that he was told it was the BoS that instituted the complaint.

Mr. Howard clarified some issues. There has been a recognition that there needs to be improvements between the land use boards. Meetings have occurred with the ZBA and PB chairs to address certain topics for a workshop. They have been postponed. They have been worked on. Donald McGillicuddy The Town Administrator needs to be addressed . If has lied to these people, it needs to be checked. Jim Cahill stated that it appeared that the PB members have been offered a plea bargain to have the charges removed. How can they do that without disclosing the source of the malfeasance. Mr. Howard stated that the charges are outlined in the public hearing notice. Mr. Cahill asked if the petitioners would be disclosed. Mr. Wakefield stated that he hoped it would be. Jen Correia stated that she supports the motion on the table and asks that PB stand united as this could happen to anyone of you and was also disappointed that all the documents were not released to Judy and Josh because how can they prepare for a public hearing without them.

Steve Macquire asked of the petitioners have to come forward or are the charges dropped automatically? Mr. Howard responded that this is not that public hearing. Rick Health stated that since the BoS sent Mr. Terenzini to ask for resignations it was essentially a plea bargain and shows intent.

Eric Taussig stated that this is misapplication of the statute and that Superior Court would be the venue and discussed a similar situation that occurred in Meredith which is the proper procedures. Impeachment proceeding is not the way to do this and limits people and impedes free discussion. Mr. Wakefield stated that the BoS did not initiate this.

Anyone could come to the BoS and make an accusation in writing and ask for a public hearing. We're not trying to impeach these people.. We're trying to follow the rules. Alan Ballard stated that the initial letter was brought from an outside individual, one individual. You asked us to trust your elected officials, but you said you had no option but to act on it. If an individual doesn't like a PB action, you don't seek removal of the members, you go to Superior Court. You could say to the petitioners that you do have recourse. Mr. Taussig pointed out that when Mr. King was before the BoS in the past it was an appointed board, not elected and that is a significant difference. Mr. King agreed.

Kim Prause asked if there is an RSA protecting the identity of the petitioner? Mr. Howard was not aware of any. Virginia Lewison read a portion of RSA 673:13 paragraph 2. and confused as to which of the offenses they are being charged with. Mr. Howard spoke to the notice of hearing. Mr. Wakefield stated that it is available at the Town offices and was not released to the newspapers. Mr. Bartlett stated that it was emailed by the Town to the newspapers on Monday.

Virginia Lewison asked if they have been told what they did. Mr. Howard then paraphrased the public hearing letters sent to Ms. Ryerson and Mr. Bartlett.

Mr. Jensen offered an amendment to the original motion: "The Moultonboro Planning Board does not support the BoS removal of two accused Planning Board members from office". He further stated that despite what has happened it is better than accusing the BoS of forcing someone to resign. Mr. Punturieri did not support the amendment. Mr. Bartlett agrees and would not withdraw his second. He was also concerned that the charges include " but are not limited to". Mr. Wakefield seconded Mr. Jensen's amendment. A vote was taken and Mr. Punturieri, Ms. Ryerson and Mr. Bartlett voted no.

Mr. Jensen, Mr. Wakefield and Mr. Goffredo voted yes. Mr. Howard did not vote. He then opened the issue up for further discussion that he was going to bring up prior to the action being taken. We are not operating per our policies and taking an action ourselves. Our action is recommending to the selectman.

He felt it was a direct conflict of interest for sitting board members voting on a motion that directly affects them. Mr. Punturieri did not agree. Mr. Jensen agreed, but felt it was their choice to step down. Mr. Howard felt it was a conflict of interest for the two sitting board members and for Mr. Wakefield who would be voting on this matter in the future.

Ms. Ryerson recused herself and the chair seated Mr. Nelson in her stead. Mr. Wakefield recused himself and the chair seated Mr. King in his stead. Mr. Bartlett also recused himself. Mr. Jensen then asked to revise his motion.

“The Moultonborough Planning Board does not support removal of two of its elected members based upon the allegations as set forth in the notice of hearing.” After more discussion Mr. King called the question, Mr. Jensen seconded and the amendment was accepted by vote of 4 Yes (Mr. Goffredo, Mr. King, Mr. Nelson, Mr. Jensen), 1 No (Mr. Howard), 1 Abstain (Mr. Punturieri) Amended motion passed by vote of 5 Yes (Mr. Goffredo, Mr. King, Mr. Nelson, Mr. Jensen, Mr. Punturieri), 1 No (Mr. Howard).

IV. Adjournment: Mr. Punturieri made the motion to adjourn at 9:02 PM, seconded by Mr. King, carried unanimously.

Respectfully Submitted,

Peter Jensen,
Vice Chairman

ATTACHMENT 8/14/13

My purpose for requesting this meeting was to bring this issue to the table in an open forum. I recognize that pending or possible litigation may limit the ability of the two defendants to openly discuss any aspect of these accusations or the possible public hearing, but that should not prevent the rest of the board from openly discussing this.

It is very disappointing that the complaints could not first come in to the planning board rather than the selectmen taking the very rare step of removal. It presents a dangerous and chilling precedent. Asking for resignations under threat of public disgrace is unethical and tantamount to blackmail. I applaud Ms. Ryerson and Mr. Bartlett for holding firm and refusing to be blackmailed.

It was quite a leap to go from complaint to asking for resignations without due process and never knowing who made the complaints. These are really procedural matters for the planning board. They do not in my opinion rise to the level of the serious charges made. No one charged stood to gain anything personally.

I have been at every meeting for the past 17 months or so and I have never heard a member of this board state that they felt that any member should be removed for any reason, not to mention malfeasance, neglect of duty, ineffectiveness or fiduciary duty. We have certainly had our moments of disagreement, but in the end, we are unpaid volunteers trying to do the best job that we were elected to do.

In conclusion, I do not believe that the actions of the board of selectmen to remove these two members was warranted. It does not serve the best interests of the citizens of Moultonboro and it damages the ability of an independent elected board to function effectively.

I would like this board to support it's members with the following motion:

The Moultonboro Planning board does not support the Board of Selectmen attempt to force the resignation of two of its elected members and the subsequent scheduling of public hearings to remove them from office.

ATTACHMENT 8/14/13

Planning Board Statement 14 August 2013

What it appears we have here could be summed up with a line from an old movie: "What we have here is a failure to communicate".

The BoS, in requesting that two ELECTED members of the Planning Board resign, without notifying the Planning Board of a complaint of identifying the source of the complaint, is attacking the Planning Board itself and, indeed, any members of the Town Board that someone disagrees with.

The Board of Selectmen have conducted secret meetings and not communicated with the Planning Board regarding the removal of these good people; people who volunteer their time without any expectation of compensation. These people are now expected to allow their reputations to be smeared by someone without the courage to be identified or now pay for their own legal defense. The Selectmen appear to have decided to do this with the encouragement of the Town Administrator, who, some have reported, has himself made disparaging and coarse comments in public regarding a recent Planning Board decision.

Further, it is stated that the BoS conduct of this issue is being advised by Peter Minkow, Esq. Because Mr. Minkow is the Planning Board Attorney and he has represented the Planning Board on matters in the past, he should be defending the Planning Board from these attacks rather than participating in them. At the very least, he should recuse himself from any contact with the Board of Selectmen in this dispute with the Planning Board. As we have been told, standards for recusal of Attorneys are much higher than those of others. Clearly, there is a conflict of interest here.

The Planning Board should retain new counsel on this matter. Mr. Minkow cannot be expected to be unbiased in this matter.